

**1. Requested Action:**

**Meeting Date: February 7, 2011**

Approval of the Subgrant Agreement between the Town of Fort Myers Beach and the Florida Department of Emergency Management for the construction phase the Neighborhood Basin Based Stormwater Project in the amount of \$422,622.00.

**Why the action is necessary:**

To move the stormwater management project forward to construction.

**What the action accomplishes:**

Approval of this Agreement provides financial assistance to the Town for construction of stormwater improvements.

**2. Agenda:**

☐ Consent  
☒ Administrative

**3. Requirement/Purpose:**

☐ Resolution  
☐ Ordinance

**4. Submitter of Information:**

☐ Council  
☒ Town Staff - Public Works

**5. Background:**

In late 2006 the Town applied for a grant through the Hazard Mitigation Grant Program for stormwater improvements in the area between Carolina Street and Tropical Shores Way. In June, 2008 the Phase I, Planning and Design, funds were allocated for the project and approved by Town Council. The Phase I deliverables were submitted to the State Emergency Management Department in December, 2009. This deliverable package has been under review by the State and FEMA since that time. The project was approved as having met all the Federal criteria to move it forward to construction.

Upon acceptance, an Agreement will need to be put into place for a consultant to finish the design, permitting, bidding and construction management. The project will then be put out to bid and constructed. Completion of the project pursuant to the Agreement is slated for January 28, 2012. An extension request to this date will be requested at the time the Agreement is returned which will extend completion to November, 2012.

Attached is a memo that provides additional background. In an effort to save paper, only pertinent pages of the Agreement are included. The entire document is available upon request.

The Subgrant Agreement has been reviewed by the Town Attorney.



**6. Alternative Action:**

Do not approve the Subgrant Agreement to move this project to construction.

**7. Management Recommendations:**

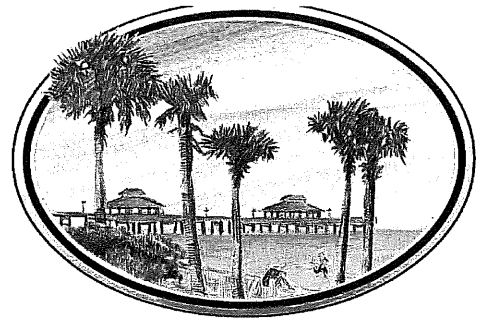
Approve

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

**9. Council Action:**

☐ Approved ☐ Denied ☐ Deferred ☐ Other



## **MEMO**

DATE: January 27, 2011

TO: Terry Stewart, Town Manager

FROM: Cathie Lewis, Public Works Director *Cathie*

SUBJECT: Basin Based Neighborhood Stormwater Improvement Project

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To provide you and Town Council additional information associated with this I offer the following. As stated in the blue sheet, the funding request was made in 2006 from Hazard Mitigation Grant Program funds being made available resulting from Hurricane Wilma. Since Phase I approval was received in 2008, planning and design work has been underway at a cost of \$262,500 of which \$184,344 has been reimbursed to the Town.

The allocation for Phase II is \$548,860 with FEMA reimbursing its' share at 75% plus an administrative allowance for a total of \$422,622. This project will provide improvements to flooding conditions along Town roadways from Carolina St. to Tropical Shores Way. Although emphasis was not placed on the section of Estero Boulevard within this area some improvements were included. Various methods will be used to accomplish these improvements including piping, swale restoration and percolation areas. At least 2 new outfalls are proposed that will require easements, but for the most part existing outfalls will be used or no outfall will be required. The Environmental Resource Permit has been received for the conveyances and outfalls; I do not anticipate needing to modify it. An FMB LDO will be needed, but all other permitting is completed.

Once the Agreement has been approved I will immediately move forward to extend the contract period to November, 2012, which is a more realistic time frame for a project such as this. A consulting engineer will be contracted to take the project through construction and the project will be readied for bid. I estimate that the project will be bid in June/July with construction beginning in September/October 2011.

This project has been designed only as a stormwater improvement project; it does not include any modifications to existing roadway or the addition of hardscape. It does not include any potable water system improvements at this time. PWSI may want to consider this as the project moves forward.

The budget for this project was developed using the assumption that the total cost equaled approximately \$1.2m, with the eligible portion being approximately \$900,000 leaving the Town's obligation at \$300,000. Since the engineering estimate is considerably less (\$548,000), the grant allocation (\$422,622.) has decreased leaving

Memo

Basin Based Neighborhood Stormwater Improvement Project

January 27, 2011

the Town's obligation at \$137,000. This will leave a balance of approximately \$163,000 that will be used for contingency but may be used for some additional improvements not initially included. I have also included this project in the CBIR process through the SFWMD, the potential of some funding through this program exists as well, but nothing is committed.

As of this date, I have not had the opportunity to look at the water utility fund to determine the reserves available nor do I have a cost estimate associated with water system improvements. At your direction I will do so however.

Please let me know if you have any questions.

pc: file

Contract Number: 11HM-3B-09-46-02-001

CFDA Number: 97.039

### **FEDERALLY FUNDED SUBGRANT AGREEMENT**

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and the Town of Fort Myers Beach (hereinafter referred to as the "Recipient").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

- A. The Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein; and
- B. The Division has received these grant funds from the State of Florida, and has the authority to subgrant these funds to the Recipient upon the terms and conditions below; and
- C. The Division has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Division and the Recipient agree to the following:

(1) SCOPE OF WORK

The Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(2) INCORPORATION OF LAWS, RULES, REGULATIONS AND POLICIES

The Recipient and the Division shall be governed by applicable State and Federal laws, rules and regulations, including those identified in Attachment B.

(3) PERIOD OF AGREEMENT

This Agreement shall begin on September 28, 2010 and shall end January 28, 2012 unless terminated earlier in accordance with the provisions of Paragraph (12) of this Agreement.

(4) MODIFICATION OF CONTRACT

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(5) RECORDKEEPING

(a) As applicable, Recipient's performance under this Agreement shall be subject to the federal OMB Circulars:

States, local governments, and Indian Tribes follow:

- A-87 for Cost Principles, Relocated to 2 CFR, Part 225
- A-102 for Administrative Requirements, and
- A-133 for Audit Requirements

performed under this Agreement, or in any way connected with it, the Recipient shall refer the discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Recipient to the State of Florida.

(c) Within thirty days of execution of this Agreement, the Recipient shall disclose all intellectual properties relating to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Recipient shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (b), have the right to all patents and copyrights which accrue during performance of the Agreement.

(22) **LEGAL AUTHORIZATION**

The Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Recipient also certifies that the undersigned person has the authority to legally execute and bind Recipient to the terms of this Agreement.

(23) **ASSURANCES**

The Recipient shall comply with any Statement of Assurances incorporated as Attachment C.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

**RECIPIENT: TOWN OF FORT MYERS BEACH**

BY: \_\_\_\_\_

Name and title: \_\_\_\_\_

Date: \_\_\_\_\_

FID# \_\_\_\_\_

**STATE OF FLORIDA**

**DIVISION OF EMERGENCY MANAGEMENT**

BY: \_\_\_\_\_

Name and Title: David Halstead, Director

Date \_\_\_\_\_

## EXHIBIT – 1

THE FOLLOWING FEDERAL RESOURCES ARE AWARDED TO THE RECIPIENT UNDER THIS AGREEMENT:

*NOTE: If the resources awarded to the Recipient are from more than one Federal program, provide the same information shown below for each Federal program and show total Federal resources awarded.*

Federal Program: *Federal Emergency Management Agency, Hazard Mitigation Grant*  
Catalog of Federal Domestic Assistance Number: 97.039  
Amount of Federal Funding: \$422,622.00

THE FOLLOWING COMPLIANCE REQUIREMENTS APPLY TO THE FEDERAL RESOURCES AWARDED UNDER THIS AGREEMENT:

*NOTE: If the resources awarded to the Recipient represent more than one Federal program, list applicable compliance requirements for each Federal program in the same manner as shown below.*

Federal Program:

*List applicable compliance requirements as follows:*

1. Recipient is to use funding to perform the following eligible activities; include mitigation projects that will result in protection of public or private property from natural hazards. Eligible projects include, but are not limited to:
  - Acquisition of hazard prone properties
  - Retrofitting of existing buildings and facilities
  - Elevation of flood prone structures
  - Infrastructure protection measures
  - Storm water management improvements
  - Minor structural flood control projects
  - Relocation of structures from hazard prone areas
  - Retrofitting of existing buildings and facilities for shelters
  - Vegetative management/soil stabilization
  - Mitigation Planning Project
  - Other projects that reduce future disaster losses
2. Recipient is subject to all administrative and financial requirements as set forth in this Agreement, or will be in violation of the terms of the Agreement.

*NOTE: Instead of listing the specific compliance requirements as shown above, the State awarding agency may elect to use language that requires the Recipient to comply with the requirements of applicable provisions of specific laws, rules, regulations, etc. For example, for Federal Program 1, the language may state that the Recipient must comply with specific laws, rules, or regulations that pertain to how the awarded resources must be used or how eligibility determinations are to be made. The State awarding agency, if practical, may want to attach a copy of the specific law, rule, or regulation referred to.*

*NOTE: Section .400(d) of OMB Circular A-133, as revised, and Section 215.97(5)(a), Florida Statutes, require that the information about Federal Programs and State Projects included in Exhibit 1 be provided to the Recipient.*

## **Attachment A**

### **Budget and Scope of Work**

#### **Scope of Work**

As a Hazard Mitigation Grant Program project, the Recipient, Town of Fort Myers Beach, will provide protection by constructing a drainage system capable of solving or reducing the flooding problem along Estero Boulevard from Carolina Drive to Tropical Shores Way within the Town of Fort Myers Beach, Lee County, Florida. The scope consists of the installation of additional concrete pipes and strategically placed inlets to the existing system to more effectively convey runoff to the outfalls.

#### **Environmental Review Project Conditions:**

1. The Recipient must follow all applicable state, local and federal laws regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. If project work is delayed for a year or more after the date of the CATEX, then coordination with and project review by regulatory agencies must be redone.
2. Any change, addition or supplement to the approved Scope of Work that alters the project (including other work not funded by FEMA, but done substantially at the same time) will require re-submission of the application to FEMA for NEPA re-evaluation before starting project work.
3. If historic or archaeological materials (or evidence thereof) are discovered, the Applicant shall stop work immediately, notify the Federal Emergency Management Agency (FEMA), and take all reasonable measures to avoid or minimize harm to the property.  
The Applicant will not proceed with work until FEMA, in consultation with the State Historic Preservation Officer (SHPO), determines that appropriate measures have been taken to ensure that the project is in compliance with the National Historic Preservation Act. The Recipient will contact also the DHS/FEMA Region IV Environmental Officer and FDEM State Environmental Liaison Officer for further guidance.
4. If endangered/threatened species or species of special concern are discovered on the project site, prior to or during construction, the Applicant shall not proceed with work until FEMA, in consultation with the U.S. Fish and Wildlife Service, determines that appropriate measures have been taken to ensure that there is no incidental take of aforementioned species.
5. If the project size is more than one acre, the Applicant will need to submit a Notice of Intent (NOI) for coverage under the Florida Department of Environmental Protection (FDEP) General Permit, prepare and implement a storm water pollution prevention plan (SWPPP), and submit the Notice of Termination (NOT) after completion of the site activities. The NOI and NOT should be provided at project close-out.
6. For projects involving groundwater dewatering activities at the construction site, provide Documentation of coverage under the Florida Department of Environmental Protection (FDEP) "Generic Permit for the Discharge of Produced Ground Water from any Non-contaminated Site Activity."
7. Any hazard materials and waste associated with this project will be stored, handled, transported and disposed in appropriate containers and/or facilities and in accordance with all applicable local, State, and Federal laws and regulations. The Contractor will implement measures to prevent spillage or runoff of chemicals, fuels, oils or sewer-related wastes during project work. If any hazardous materials are discovered within the project area, all ground disturbing activities will cease and the Florida Department of Environmental Protection will be contacted.

8. Construction vehicles and equipment used for this project shall be maintained in good working order to minimize pollutant emissions.

9. The Recipient must adhere to all conditions of all issued permits.

This is FEMA project **1609-48-R**, funded under **1609-DR-FL**.

The Period of Performance of this project ends on **January 28, 2012**.

**Schedule of Work**

Construction:	12 months
State Contracting:	1 month
State Final Inspection	1 month
<u>State Closeout</u>	<u>2 months</u>
<b>Total Period of Performance:</b>	<b>16 months</b>

**Budget**

**Line Item Budget\***

	<b>Project Cost</b>	<b>Federal Share</b>	<b>Local Share</b>
Materials:	\$ 440,945.00	\$ 330,708.75	\$110,236.25
<u>Labor:</u>	<u>\$ 107,915.00</u>	<u>\$ 80,936.25</u>	<u>\$ 26,978.75</u>
<b>Sub-Total:</b>	<b>\$ 548,860.00</b>	<b>\$ 411,645.00</b>	<b>\$137,215.00</b>
<u>Administrative Cost:</u>	<u>\$ 0.00</u>	<u>\$ 10,977.00</u>	<u>\$ 0.00</u>
<b>Total:</b>	<b>\$ 548,860.00</b>	<b>\$ 422,622.00</b>	<b>\$137,215.00</b>

*\*Any line item amount in this Budget may be increased or decreased 10% or less without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

**Funding Summary**

<i>Federal Share:</i>	<i>\$ 411,645.00 (75%)</i>
<i>Local Share:</i>	<i>\$ 137,215.00 (25%)</i>
<b>Total Project Cost:</b>	<b>\$ 548,860.00 (100%)</b>

*Recipient Administrative Allowance up to \$10,977.00.*